

¹Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric Technicians.

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

TINA LOUISE CASOLI

Psychiatric Technician License
No. PT 26441,

Petitioner.

QAH No. L2008090051

PROPOSED DECISION

This matter was heard by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, on September 11, 2008, in Los Angeles, California.

Shobita Misra, Deputy Attorney General, represented the Department of Justice.

Petitioner Tina Louise Casoli was present and represented herself.

Evidence was received and the matter was submitted on September 11, 2008. The Administrative Law Judge makes the following factual findings and legal conclusions.

FACTUAL FINDINGS

1. On April 28, 1989, the Board of Vocational Nursing and Psychiatric Technicians (Board)¹ issued psychiatric technician license number PT 26441 to Tina Louise Casoli (Petitioner). There was no evidence of whether or when the license expired.

2. On February 2, 2005, in Case No. T-1091, the Board issued a default decision revoking Petitioner's license. Petitioner had failed to respond to an accusation alleging that she had been convicted of the following offenses: (a) on February 10, 1997, on her plea of guilty of violating Vehicle Code section 23152, driving under the influence of alcohol, and Health and Safety Code section 11550, use/under the influence of a controlled substance; and

¹ As of July 1, 2008, the Board became a Bureau within the Department of Consumer Affairs.

(2) on June 25, 2001, on her plea of guilty of violating Health and Safety Code section 11377, subdivision (a), possession of a controlled substance, a felony, and Health and Safety Code section 11364, possession of a smoking device.

3. Petitioner's license history also includes a citation issued on April 19, 2001, based upon Petitioner's admission, when she filed for license renewal in 1999, that she had been convicted of petty theft in violation of Penal Code section 488/490.5. Petitioner paid the administrative penalty (fine) of \$250 to the Board.

4. The current petition for reinstatement of Petitioner's psychiatric technician license was received by the Bureau on July 29, 2008. Attached to the petition, and discussed in more detail below, are: a letter documenting Petitioner's completion of a substance abuse program; an order expunging the June 25, 2001 convictions; a work schedule; and character reference letters.

5. Petitioner began an in-patient drug treatment program at Chapman House on February 5, 2002, and completed the program on August 1, 2002. Letters from the treatment coordinator and the director of admissions attest to her focus and positive attitude while in the program, as well as her ability to apply what she was learning to her daily life. The program included group 12-step meetings with a sponsor and random drug testing. Petitioner continues to attend Alcoholics Anonymous meetings about three times per month.

6. On March 24, 2003, Petitioner was granted relief from the convictions of June 25, 2001, for felony possession of a controlled substance and possession of a smoking device. Under Penal Code section 1203.4, her guilty pleas were set aside, pleas of not guilty were entered, and the charges were dismissed.

7. Petitioner last worked before her license was revoked, from January to May 2004, for Maxim Health Care, caring for adult patients in various psychiatric facilities. She has read books and/or articles on subjects relevant to the duties of a licensee, but did not attend continuing education courses, as she believed that a license was necessary to take the courses. She is willing to take whatever coursework is required by the Bureau.

8. Petitioner submitted reference letters from two friends and from her mother, sister-in-law, and her fiancé. The letters establish that Petitioner has been devoted to her rehabilitation and recovery over the last five years, has a strong support group of friends and family, and has worked hard to separate herself from the negative influences that affected her life and to reestablish connections with her family and friends that exert a positive influence. Petitioner's fiancé noted that her drug use ruined their relationship, which included their two children at the time. However, Petitioner committed herself to rebuilding the family relationships and they now have a third child. The authors of the letters comment on Petitioner's volunteer commitments to her children's school activities and to church activities, her support network of family and friends, as well as Petitioner's desire to re-enter her profession and the positive changes in her life.

9. Petitioner accepts full responsibility for the acts that resulted in the revocation of her license. Petitioner has developed a capable support system and now has a well-rounded life. She was sincere in her statements, both in testimony and in the petition, that her drug experiences had a destructive effect on her a life, which became a turning point for her, and that she does not want to live that life; rather, through rehabilitation, growth and maturity, she has a clearer sense of direction and purpose and would like to regain her license and progress in her field.

LEGAL CONCLUSIONS

1. Under Business and Professions Code section 4524, subdivision (b), Petitioner has the burden of establishing by clear and convincing evidence that she is entitled to the requested relief.

2. Rehabilitation criteria are established in California Code of Regulations, title 16, sections 2522 and 2522.5, subdivision (b), and include, as relevant here, the nature and severity of the criminal acts, the time since commission of the crime, compliance with probations terms, any subsequent acts which would be a reason to deny a license, and evidence of rehabilitation. Petitioner clearly and convincingly established that cause exists to reinstate her license, pursuant to these regulations and Business and Professions Code section 4524. Petitioner clearly and convincingly demonstrated that she is in control of her substance addiction. No evidence of misconduct subsequent to her discipline was presented. Some of her convictions have been expunged. More than seven years have elapsed since the last misconduct that led to the revocation of her license. Under these circumstances, public protection will not be jeopardized by reinstating Petitioner's license. (Factual Findings 1-9.)

3. However, the public will be fully protected only if such reinstatement is on a probationary basis. Both Government Code section 11522, and Business and Professions Code section 4524, subdivision (d), provide the authority to reinstate a previously revoked license upon appropriate "terms and conditions." Petitioner's past misconduct was the result of drug addiction and she has been sober a moderate period of time. Petitioner has not worked in the profession for many years and has not taken continuing education courses, so there is a question as to her present competency to practice. Thus, a five-year probation is warranted, with terms and conditions including that she comply with the Bureau's addiction recovery program and take specified coursework. Further, Petitioner will be required to take and pass the licensing exam. (Factual Findings 1-9.)

//

//

ORDER

The petition for reinstatement of Tina Louise Casoli (psychiatric technician license number PT 26441) is hereby GRANTED, as follows:

Petitioner's license is reinstated; the reinstated license is immediately revoked; however, the revocation is stayed for a period of five (5) years on the following terms and conditions:

1. Take and pass licensure examination

As a condition for reinstatement of a license, Petitioner shall take and pass the licensure exam currently required of new applicants prior to resuming practice. Petitioner shall pay the established examination and licensing fees.

All standard terms or any other terms of probation shall be tolled until Petitioner has successfully passed the licensure examination and notice of licensure has been mailed to Petitioner by the Bureau. Petitioner's failure to pass the licensure examination within two (2) years shall be considered a violation of her probationary status.

2. Chemical dependency support/recovery groups

Within five (5) days of the effective date of the Decision, Petitioner shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group), or may continue at any such groups she is attending. Verified documentation of attendance shall be submitted by Petitioner with each quarterly report. Petitioner shall continue attendance in such a group for the duration of probation.

3. Abstain from controlled substances

Petitioner shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs, as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

4. Abstain from use of alcohol

Petitioner shall completely abstain from the use of alcoholic beverages during the period of probation.

5. Submit biological fluid samples

Petitioner shall immediately submit to biological fluid testing, at Petitioner's cost, upon request by the Bureau or its designee. There will be no confidentiality in test results.

positive test results will be immediately reported to the Bureau and the Petitioner's current employer.

6. Obey all laws

Petitioner shall obey all federal, state and local laws, including all statutes and regulations governing the license. Petitioner shall submit, in writing, a full and detailed account of any and all violations of the law to the Bureau within five (5) days of occurrence. To ensure compliance with this term, Petitioner shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Bureau within thirty (30) days of the effective date of this decision, unless the Bureau determines that fingerprint cards were already submitted by the Petitioner as part of her licensure application process effective July 1, 1996. Petitioner shall also submit a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the decision.

7. Compliance with probation program and quarterly report requirements

Petitioner shall fully comply with terms and conditions of the probation established by the Bureau and shall cooperate with the representatives of the Bureau in its monitoring and investigation of the Petitioner's compliance with the Probation Program.

Petitioner shall submit quarterly reports, under penalty of perjury, in a form required by the Bureau. The reports shall certify and document compliance with all the conditions of probation.

8. Notification of address and telephone number change(s)

Petitioner shall notify the Bureau, in writing, within five (5) days of a change of residence or mailing address, of her new address and any change in her work and/or home telephone numbers.

9. Notification of residency or practice outside of state

Petitioner shall notify the Bureau, in writing, within five (5) days, if she leaves California to reside or practice in another state. Petitioner shall notify the Bureau, in writing, within five (5) days, upon her return to California.

The period of probation shall not run during the time Petitioner is residing or practicing outside California.

10. Notification to employer(s)

When currently employed or applying for employment in any capacity in any health care profession, Petitioner shall notify her employer of the probationary status of Petitioner's license. This notification to Petitioner's current health care employer shall occur no later

than the effective date of the Decision. Petitioner shall notify any prospective health care employer of her probationary status with the Bureau prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of this Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Petitioner shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Bureau, shall include a performance evaluation and such other information as may be required by the Bureau.

Petitioner shall notify the Bureau, in writing, within five (5) days of any change in employment status. Petitioner shall notify the Bureau, in writing, if she is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

11. Interviews/meetings with board representative(s)

During the period of probation, Petitioner shall appear in person at interviews/meetings as directed by the Bureau, or its designated representatives.

12. Employment requirements and limitations

During probation, the Petitioner shall work in her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, Petitioner shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Bureau approved continuing education course except as approved, in writing, by the Bureau. Petitioner shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Bureau.

13. Supervision requirements

Petitioner shall obtain prior approval from the Bureau, before commencing any employment, regarding the level of supervision provided to the Petitioner while employed as a licensed vocational nurse or psychiatric technician.

Petitioner may not function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians,

certified nursing assistants or unlicensed assistive personnel) or as supervising psychiatric technician during the period of probation, except as approved in writing by the Bureau.

14. Completion of educational course(s)

Petitioner, at her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) that resulted in her license revocation no later than the end of the first year of probation, or Petitioner shall be suspended from practice, until she has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Bureau shall notify Petitioner of the course content and number of contact hours required. Within thirty (30) days of the Bureau's written notification of assigned coursework, Petitioner shall submit a written plan to comply with this requirement. The Bureau shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Petitioner shall cause the instructor to furnish proof to the Bureau within thirty (30) days of course completion.

15. Maintenance of valid license


Petitioner shall, at all times while on probation, maintain an active current license with the Bureau, including any period during which suspension or probation is tolled.

Should Petitioner's license, by operation of law or otherwise, expire, upon renewal or reinstatement, Petitioner's license shall be subject to any and all terms of this probation not previously satisfied.

16. Violation of probation/Completion of probation

If Petitioner violates the conditions of her probation, the Bureau after giving Petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Petitioner's license. If during the period of probation, an accusation or petition to revoke has been filed against Petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Bureau. Upon successful completion of probation, Petitioner's license will be fully restored.

DATED: October 30, 2008.


DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings